

Internal Revenue Service

Number: **200747013**

Release Date: 11/23/2007

Index Numbers: 355.01-00, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-128060-07

Date:

August 15, 2007

Legend

Distributing =

LLC 1 =

LLC 2 =

LLC 3 =

Controlled =

Business 1 =

Business 2 =

Activity 1 =

Activity 2 =

Individual AB =

Date X =

a% =

b%	=
c%	=
d%	=
e%	=
f%	=
g%	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
\$AA	=
\$BB	=
\$CC	=

Dear

This letter responds to your June 13, 2007 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Distributing is the common parent of an affiliated group of corporations filing a consolidated Federal income tax return. Distributing has both outstanding Class A

voting and Class B nonvoting common stock, as well as redeemable preferred stock. For the last five years Distributing has directly owned the following interests in LLC 1: a% of the vote and b% of the capital interests and, for the last five years until Date X, Distributing had owned c% of the profits interests in LLC 1. Since Date X, Distributing has owned d% of the profits interest of LLC 1. Distributing has also directly owned e% of LLC 2. LLC 1 and LLC 2 are entities, each of which is treated as a partnership for Federal income tax purposes. LLC 1 is engaged in Business 1. LLC 2 is engaged in Activity 1.

Distributing, through a disregarded entity, owns all of the stock of Controlled and f% of LLC 3. Controlled is engaged in Business 2. Individual AB is the President of Controlled and has functioned as its CEO since the formation of Controlled. LLC 3 is an entity that is treated as a partnership for Federal income tax purposes. LLC 3 is engaged in Activity 2. Activity 1 and Activity 2 are the types of activities that are elements of Business 2.

Financial information has been received indicating that Business 1 (as conducted by LLC 1) and Business 2 (as conducted by Controlled) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For what are presented as valid business reasons, Distributing has proposed the following transaction:

- (i) Controlled will recapitalize its stock so that its authorized shares increase to a and the current outstanding b shares are exchanged for c outstanding shares.
- (ii) Distributing will transfer to Controlled:
 - (a) its entire interest of f% of LLC 3,
 - (b) its entire interest of e% of LLC 2, and
 - (c) investments with an approximate fair market value of \$AA.
- (iii) Distributing will pay off or assume a bank loan of Controlled, which currently totals \$BB, but which may be as high as \$CC at the time Distributing pays off or assumes the loan.
- (iv) Distributing will distribute c shares of Controlled to its Class A and Class B common shareholders (but not to its redeemable preferred stock shareholders).

- (v) Controlled will enter into an employment agreement with Individual AB pursuant to which Individual AB will agree to act as President and CEO of Controlled. In addition, Individual AB will purchase g% of the stock (or d shares) of Controlled in exchange for a recourse note.

In connection with the proposed transaction, Distributing makes the following representations:

(a) No part of the consideration to be distributed by Distributing as part of the proposed transaction will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(b) The five years of financial information submitted on behalf of Distributing and Controlled is representative of each corporation's present operations and, with regard to each of these businesses, there have been no substantial operational changes since the date of the last financial statements submitted.

(c) Following the distribution, Distributing and Controlled will each continue the active conduct of its business independently and with its separate employees.

(d) The proposed transaction will be carried out for the following corporate business purposes: (i) to enhance the ability of Controlled to attract, retain, and properly incentivize key employees with an equity interest in Controlled; (ii) to expand Controlled business and brand recognition for that business by making it possible for Controlled to be able to sell to customers that would not directly buy from Controlled if it were owned by a corporation; and (iii) to have Controlled be family owned in order to facilitate its dealings with various Federal and state regulatory bodies. The distribution is motivated, in whole or substantial part, by these corporate business purposes.

(e) The distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(f) For purposes of § 355(d), immediately after the distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.

(g) For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by

purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.

(h) The total fair market value of the assets transferred by Distributing to Controlled as part of the proposed transaction will equal or exceed the aggregate adjusted basis of the transferred assets.

(i) Controlled will not assume liabilities or receive assets subject to liabilities in the proposed transaction.

(j) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of Controlled stock.

(k) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the stock of Controlled will be included in income immediately before the distribution (see § 1.1502-19).

(l) Payments made in connection with all continuing transactions after the distribution, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(m) No two parties to the proposed transaction will be investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(n) The distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(o) Distributing, Controlled, and its shareholders will each pay their own expenses, if any, incurred in connection with the distribution.

(p) No person holds a 50 percent or greater interest in the stock of Distributing or Controlled, after the distribution, within the meaning of § 355(g), who did not hold such an interest before the transaction.

Based solely on the information and representations submitted, we rule as follows on the proposed transaction:

(1) The contribution of assets from Distributing to Controlled, as part of the proposed transaction, will qualify as a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" under § 368(b).

(2) Distributing will not recognize any gain or loss on the contribution of assets that are part of the proposed transaction (§ 361(a)).

(3) Controlled will not recognize any gain or loss on the receipt of assets from Distributing that are part of the proposed transaction (§ 1032(a)).

(4) Controlled's basis in each asset received from Distributing, as part of the proposed transaction, will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(5) Controlled's holding period in each asset received from Distributing, as part of the proposed transaction, will include the period during which Distributing held that asset (§ 1223(2)).

(6) Distributing will not recognize any gain or loss on the distribution of all of the Controlled stock as part of the proposed transaction (§ 361(c)).

(7) No Distributing shareholder will recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of shares of Controlled stock as part of the proposed transaction (§ 355(a)(1)).

(8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of each Distributing shareholder immediately after the distribution will be the same as that shareholder's aggregate basis in the Distributing stock held immediately before the distribution, allocated in the manner described in § 1.358-2 (§ 358(a)(1), (b) and (c)).

(9) The holding period of the Controlled stock received by each Distributing shareholder as part of the proposed transaction (including any fractional share interest in Controlled to which a Distributing shareholder may be entitled) will include the holding period of the Distributing stock on which the distribution was made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with §§ 312(h), 1.312-10(a) and 1.1502-33(e)(3).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 49. However, when the criteria in section 11.06 of Rev. Proc. 2007-1, 2007-1 I.R.B. 1, 50 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Steven J. Hankin
Senior Technician Reviewer, Branch 6
(Corporate)